

RULES AND REGULATIONS (BYLAWS) OF THE ZONING BOARD OF APPEALS CITY OF NORTHAMPTON

ARTICLE I: ORGANIZATION

Section 1 - Officers

At the first regular meeting of each calendar year, the Board shall elect officers of the Board to include a chairperson and vice-chairperson. Associates do not participate in this act.

Section 2 - Chairperson: Powers and Duties

The chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time. He/she shall appoint such committees as may be found necessary or desirable.

In addition to powers granted by general laws and local ordinances, and subject to these rules and further instructions of the Board, the chairperson shall transact the official business of the Board, supervise the work of the clerk, request necessary help, direct the work of all subordinates, and exercise supervisory power. He/she shall at each meeting, report on all official transactions that have not otherwise come to the attention of the Board.

Section 3 - Vice-Chairperson

The vice-chairperson shall act as chairperson in case the chairperson is absent, disabled or otherwise unable to perform his/her duties.

Section 4 - Associate Members

Two associate members are appointed by the Mayor and confirmed by City Council, in accordance with the Northampton Zoning Ordinance and M.G.L. chap. 40A, §12. The chairperson of the Board shall designate an associate member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of any Board member. In the event of a vacancy on the Board, the chairperson may designate an associate member to act as a member of the Board until someone is appointed to fill the unexpired portion of the vacated term. Associate members may participate in any discussion of bylaws and other procedural matters.

Section 5 - Quorum

The Zoning Board has three members and two associate members, as established in §10.9 of the Northampton Zoning Ordinance. The sitting Zoning Board is a three person board. Three person boards require three members or associates to be present for a quorum.

Section 6 - Regular Meetings

Regular meetings of the Board of Appeals shall be held at such time and place as designated by the chairperson.

Section 7 - Special Meetings

Special meetings may be called by the Chairperson, or at the request of two members. Written notice thereof shall be given to each member at least forty-eight hours before the time set. Notices shall be posted publicly as required by law.

Section 8 - Zoning Administrator

The Zoning Administrator shall be either a full member or an associate member of the Zoning Board and serve on a rotational basis at the 4:00 PM Zoning Administrator Hearings to review Findings. The Zoning Administrator shall follow the procedures as set forth in Article III Section 4-Order of Business for the Zoning Board of Appeals.

ARTICLE II: APPLICATIONS TO THE BOARD

Section 1 - Application Form

Every application for action by the Board shall be made on the official form. Any communication, purporting to be an application, shall be treated as mere notice of intention to seek relief, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed.

Section 2 - Filing Period

Every application shall be filed and every appeal taken within thirty days from the date of refusal of a permit by, or the date of the order, ruling decision or determination of, the Building Inspector or other administrative official.

Section 3 - Plan of Land To Accompany Petition

Each application and petition to the Board shall be accompanied by a sketch or plan as prescribed by the Zoning Ordinance of the City of Northampton.

Section 4 - Procedural Requirements for Findings

Procedural and filing requirements for Findings shall be identical to those for Special Permits heard before the Board.

ARTICLE III: HEARINGS

Section 1 - Notice

Notice of hearings shall be advertised as required by the provisions of General Laws, Chapter 40A. In addition, a copy of the advertised notice shall be sent by mail, at least fourteen days prior to the date of the hearing, postage prepaid, to the applicant or petitioner, to "parties in interest", as defined in M.G.L. chap 40A, §11 as they appear on the most recent local tax list, to the Planning Board of every abutting town, and all those listed in the law.

Section 2 - Hearings To Be Public

All hearings shall be open to the public. No person shall be excluded unless he is considered by the chairperson to be a "serious hindrance" to the workings of the Board.

Section 3 - Representation And Absence

An applicant may appear in his own behalf, or be presented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board may decide on the matter using the information it has otherwise received.

Section 4 - Order Of Business

- a. Reading of petition and legal notices by the Chairperson, together with presentation of correspondence relating to the matter, if any. The Chair may set reasonable restrictions on the length of all presentations and rebuttals.

- b. Applicant's presentation.
- c. Proponents and opponent's presentations, if any, and questions by those seeking information.
- d. Applicant's rebuttal, restricted to matters raised by opponent's presentation.

Members of the Board who are hearing the case may direct appropriate questions during the hearing.

Section 5 - Brief To The Board

It is recommended that every Appeal, and every application for a Variance or Special Permit, be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a Variance when the following points, based on General Laws, Chapter 40A, Section 10 should be clearly identified and factually supported:

- a. The particular use proposed for the land or building.
- b. The conditions especially affecting the property for which a Variance is sought.
- c. Facts which make up the hardship.
- d. Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- e. Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Briefs may be filed at the Public Hearing or within such time thereafter as may be fixed by the Board, but in no case later than ten days after the Public Hearing.

A detailed record of proceedings, including the vote on each question, must be filed with the City Clerk within fourteen (14) days of the decision.

ARTICLE IV: REVIEW FEES

Section 1.00 - Review Fees Required

1.01: If, after receiving an application, the Board determines that in order to review that application it requires technical advice unavailable from municipal employees, it may employ outside consultants. Whenever possible it shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the applicant. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone.

1:02: A review fee may be imposed only if:

- (a) the work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board,
- (b) the board finds that such review work can not be done with city forces in a reasonable amount of

time,

- (c) the work is in connection with the applicant's specific project, and
- (d) all written results and reports are made part of the record before the Board.

1.03: A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B, §1-19. However, before a fee is imposed:

- (a) the applicant shall be given five business days notice and opportunity to submit written comments relative to the invitation for bids or request for proposals,
- (b) the applicant shall be given five business days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract.
- (c) the applicant shall be given five business days notice and the opportunity to file an appeal of the selection of the outside consultant with the City Council. Grounds for said appeal are limited to written claims, with written documentation, that the consultant selected has a conflict of interest or does not possess the minimum required qualification in accordance with M.G.L. c. 44, §53G. If the City Council does not act within thirty days the Board's decision shall stand.
- (d) All time limits for action shall be extended during administrative appeals and processes detailed in paragraphs a, b, and c above.

1.04: Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten days of receiving written notification of the execution of a contract with a consultant, the Board may deny the permit.

1.05: Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44, §53G.

- (a) Funds from the special account may be expended only for the purposes described in section 4.02, above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B, §1-19.
- (b) Within sixty days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest (if any).

ARTICLE V: DISPOSITION BY THE BOARD

Section 1 - Voting Requirement

The concurring vote of the three sitting members of the Board shall be necessary in any action taken by the Board, except that a simple majority of the Board shall be required to grant a Comprehensive Permit.

The record shall show the vote of each member upon each question or, if absent or failing to vote, indicate such fact. It shall, in addition, set forth clearly the reason or reasons for its decisions.

Section 2 - Withdrawal

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. After an advertisement withdrawal only by Board approval.

Section 3 - Reconsideration

Once a petition has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Section 4 - Reapplication

In order to have a petition for a Variance reheard within two years, the petitioner must request permission from the Planning Board and the Permit Granting Authority, showing new evidence that substantially alters the conditions of the petition. Once the boards agree the petitioner must reapply to the Board of Appeals in the normal manner.

Section 5 - Extensions

Reasonable extension of permits may be granted by the Board for any good cause shown.

ARTICLE VI: COMPREHENSIVE PERMIT RULES

Section

- 1.00 Purpose and Context
- 2.00 Definitions
- 3.00 Filing, Time Limits, and Notice
- 4.00 Public Hearing and Decision
- 5.00 Appeals

Section 1.00 - Purpose and Context

These rules establish procedures for applications to the Zoning Board of Appeals for Comprehensive Permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c.40B, §20-23. They are required by M.G.L. c. 40B, §21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. The purpose of that act and these rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

These rules must be read in conjunction with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00, the Guidelines for Local Review of Comprehensive Permits, published periodically by the Executive Office of Communities and Development and these Rules and Regulations.

Section 2.00 - Definitions

- (a) Board means the Northampton Zoning Board of Appeals established under M.G.L. c. 40A, s. 12.
- (b) Local official means any city Board of Health; Planning Board; Conservation Commission; Historical Commission; Historic District Commission; Housing Partnership; Fire Department; Police Department; Department of Public Works; Office of Planning and Development; and Building Inspector.

Section 3.00 - Filing, Time Limits, and Notice

3.01: The application for a Comprehensive Permit shall consist of eleven (11) copies of the following (see also 760 CMR 31.02(2)):

- (a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch, which need not have an architect's signature, of the items required by this paragraph and paragraph (c) below. All structures of five or more units must have site development plans signed by a registered architect;
- (b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This may be combined with that required in paragraph (a), above;
- (c) preliminary architectural, scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed by a registered architect;
- (d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;
- (e) where a subdivision of land is involved, a preliminary subdivision plan;
- (f) a preliminary utilities plan showing the proposed location and types of sewage water and drainage facilities including hydrants;
- (g) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01:
 - (i) that the applicant is a public agency, a non-profit organization, or a limited dividend organization; and
 - (ii) that the applicant controls the site; and
 - (iii) meets one of the following criteria:
 - the project is fundable under a low and moderate income housing program; or
 - that the project is a local initiative proposal eligible for a Comprehensive Permit pursuant to 760 CMR 45.04 and Northampton's adopted local Initiative Plan, including documents showing that the project will be affordable for a minimum of 99 years, and
- (h) a list of requested exceptions to local codes, ordinances, and regulations, including the zoning ordinance, subdivision regulations, and wetlands protection ordinance.

3.02: The application shall be accompanied by a filing fee of: \$250, plus \$50 per unit, plus \$3 per abutter and abutters to the abutter within 300', plus any review fee imposed by the Executive Office of Community Development. The Board may waive or reduce fees.

3.03: Within seven days of filing of the application, the Board shall send each local official, as defined in

§2.00(b), notice of the application, and a copy of the list required by §3.01(h). The Board shall provide copies of the entire application to the Planning Board, the Office of Planning and Development, the Department of Public Works, the Housing Partnership, and to other local officials who request a copy.

Section 4.00 - Public Hearing and Decision

4.01: The Board shall hold a public hearing on the application within thirty days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

4.02: The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

4.03: If a subdivision of land is involved, the Board must render a decision on the basis of the information in the record. The following shall apply:

1. No construction is permitted until a Definitive Subdivision Plan has been submitted to and approved by, with reasonable conditions, the Board.
2. Definitive Subdivision Plans shall be prepared and submitted in accordance with the Planning Board's "Rules and Regulations Governing the Subdivision of Land in the City of Northampton," except when the Board has granted waivers of those regulations. The Zoning Board and not the Planning Board is the permit granting agency.

4.04: The Board may dispose of the application in the following manner:

- (a) approve a Comprehensive Permit on the terms and conditions set forth in the application,
- (b) approve a Comprehensive Permit with conditions with respect to height, site plan, size, shape or building materials, plans easements, and filing requirements that do not render the construction or operation of such housing uneconomic, or
- (c) deny a Comprehensive Permit as not consistent with local needs.

Section 5.00 - Appeals

5.01: If the Board approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, s. 17.

5.02: If the Board denies the Comprehensive Permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, §22, if applicable.

ARTICLE VI: AMENDMENT OF RULES

Section 1 - Amendments

These rules may be amended or changed at any meeting of the Board called for such purpose by a majority vote of the Zoning Board members and associate members.

Section 2 - Effective Date

These rules shall take effect upon the date of adoption by the Board. Any amendments hereto shall likewise take effect immediately upon adoption.

Adopted June 13, 1984

Amended March 20, 1991

Amended January 6, 1993

Amended August 23, 2001 (added Article 1, Section 8)

(rules and regulations bylaws of the Zoning Board ZBA 8/31/2001)